

## 8. Adjustments and appeal procedures are as follows:

- a. Rate adjustments may be made to correct errors.
- b. A final adjustment will be made for those facilities which have terminated participation in the program and have disposed of all its depreciable assets. Federal medicare regulations pertaining to gains and losses on disposable assets will be applied.
- c. Any requests for reconsideration of the rate must be submitted in writing to the developmental disabilities division within ten days of the date of the rate notification of the final rate determination.
- d. A provider may appeal a decision within thirty days after mailing of the written notice of the decision on a request for reconsideration of the final rate.

**Section 10 - Reimbursement**

Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system illustrated in Appendix A and B.

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1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. The determination of a final rate for all services begins with the reported cost of the provider's operations for the previous fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.
2.
  - a. Settlements will be made through a recoupment or refund to the department for an overpayment, or an additional payment to the provider for an underpayment. The provider may elect to make a cash payment to refund the overpayment or establish a receivable and have the overpayment recouped by withholding and applying any payments due on current claims to the receivable.
  - b. Interprovider settlements between intermediate care facilities for the mentally retarded and day services will be made through a recoupment or refund to the department from the day service provider to correct an overpayment; or a payout to the intermediate care facilities for the mentally retarded, for the day service provider, to correct an underpayment.
3. Limitations
  - a. The department shall accumulate and analyze statistics on costs incurred by providers. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations may be established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules or statutes.
  - b. Providers, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider will be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agreement. The provider must, within ten days of such notification, demonstrate, to the satisfaction of the department, that the department should not invoke its authority under this provision, or accept the department's finding.
  - c. Providers will not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.

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- d. Providers of residential services must offer services to each resident three hundred sixty-five days per year (except for leap years in which three hundred sixty-six days must be offered). Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers will not be reimbursed for those days in which services are not offered to residents.
- e. Providers of day services must offer services to each client two hundred sixty days per year (except for leap years in which two hundred sixty-one days may be offered). Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers will not be reimbursed for those days services are not offered to the clients. State recognized holidays will be treated as days in which services are offered.
- f.
  - (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty-five days per year per resident. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability coordinator determines that a failure to meet the minimum was justified.
  - (2) Days of services in facilities subject to the application of subdivision e must be provided for a minimum of two hundred forty days per year per client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability coordinator determines that a failure to meet the minimum was justified.
  - (3) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the resident or client will be counted towards meeting the minimum.

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- g. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:
- (1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;
  - (2) Comparable salaries and benefits for comparable positions in state government;
  - (3) Comparable salaries and benefits for comparable positions in the community served by the provider; or
  - (4) Data from paragraphs 1, 2, and 3, taken in combination.
- By using private funds, providers may establish higher salaries and benefit levels than those established by the department.
- h. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere. Comparable services will be obtained based on availability first from the local market, then the regional market and finally the national market if needed.

#### Section 11 - Cost Report

1. The cost report provides for the identification of the allowable expenditures and basic services subject to reimbursement by the department. Where costs are incurred solely for a basic service, the costs must be assigned directly to that basic service. Where costs are incurred jointly for two or more basic services, the costs will be allocated as follows:
  - a. Personnel. The total cost of all staff identified in payroll records must be listed by position title and distributed to basic services subject to the approval of staff client ratios by the department. Time studies may be performed for one week at least quarterly for allocation. Where no time studies exist, the applicable units must be used for allocation. Where there is no definition of a unit of service, the unit of service for residential settings shall be used.
  - b. Fringe benefits. The cost of fringe benefits must be allocated to basic services based on the ratio of the basic service personnel costs to total personnel costs. Personnel costs on which no fringe benefits are paid will be excluded.

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- c. Equipment. The total cost of all equipment, whether rented, leased, purchased, or depreciated, must be distributed to basic service based on usage or applicable units.
- d. Real property expense. The total of all property costs, whether rented, leased, purchased, or depreciated, must be allocated based on direct square footage. Where multiple usage of direct use area occurs, the allocation will first be done by square footage and then by applicable units.
- e. Travel. The total of all unassigned travel costs, which must not exceed the state rate of reimbursement, must be included in administrative costs.
- f. Supplies. The total of all unassigned supply costs must be included with administrative costs.
- g. Food services. The total of all food costs should be allocated based on meals served. Where the number of meals served has not been identified, applicable units must be used.
- h. Insurance and bonds. The total of all such costs except insurance costs representing real property expense must be included as administrative costs.
- i. Contractual services. The total of all contractual costs must be allocated based upon applicable units or, if appropriate, included as part of the administrative costs.
- j. Production costs. Total expenses for facility-based day and work activity must be allocated in part to production using the facility-based mean productivity percentage for each service where production occurred. If the provider's records do not identify total expenses for nonfacility-based activities from total expenses for facility-based activities, the department shall use total expenses and total mean productivity percentage for each service where production occurred.
- k. General client costs. Total general client expenses must be allocated to service categories, exclusive of production, room, board, and supported living arrangements based on actual census days as illustrated in Appendix B.
- l. Administrative costs. Total administrative expenses must be allocated to all service categories, exclusive of room, board, and production, based upon the ratio of the basic service cost to total cost excluding administrative and production costs. The percentage calculated for residential services must be based on total costs for training, room, and board for the specific residential service with the allocation made only to training.

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- m. Administrative costs to production. A portion of the administrative expense allocated to facility-based day and work activity must be allocated to production based upon the facility-based mean productivity percentage for each service wherein production occurred. If the provider's records do not identify total expenses for nonfacility-based activities from total expenses for facility-based activities, the department will use total expenses and total mean productivity percentage for each service where production occurred.
2. Identification of the means of financing is to be as follows:
    - a. Budget reports require the disclosure of all revenues currently used to finance costs and those estimated to finance future costs, inclusive of the provider's estimate of state financial participation.
    - b. Revenues must be distributed on the appropriate budget report by program. Where private contributions are used to supplement or enrich services, the sum may be distributed accordingly. Where contributions are held in reserve for special purposes, it may be described by narrative.
    - c. The disclosure of contract income and production costs is required to establish a rate of reimbursement supplemental to, and not duplicative of, these revenues and costs.
    - d. State financial participation in the habilitative costs associated with production activities where contract income is realized shall not exceed the percentage difference between the mean productivity of the clients, as determined pursuant to 29 CFR 525, and one hundred percent.

## Section 12 - Adjustment to Cost and Cost Limitation

1. Providers under contract with the department to provide services to developmentally disabled persons must submit no less than annually, a statement of costs, both current and estimated, on the cost report.
2. Providers must disclose all costs and all revenues.
3. Providers must identify income to offset costs where applicable in order that state financial participation not supplant or duplicate other funding sources. These sources, and the cost to be offset, must include, but are not limited to, the following:
  - a. Fees, the cost of the service or time for which the fee was imposed excluding those fees based on cost as established by the department.

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- b. Insurance recoveries income, costs reported in the current year to the extent of costs allowed in the prior or current year for that loss.
  - c. Rental income, cost of space in facilities or for equipment included in the rate of reimbursement.
  - d. Telephone and telegraph income from clients, staff, or guests, cost of the service.
  - e. Rental assistance or subsidy when not reported as third party income, total costs.
  - f. Interest or investment income, interest expense.
  - g. Medical payments, cost of medical services included in the rate of reimbursement as appropriate.
  - h. Respite care income when received for a reserved bed, room, board, and staff costs.
  - i. Other income to the provider from local, state, or federal units of government may be determined by the department to be an offset to cost.
4. Payments to a provider by its vendor will be considered as discounts, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant, and as such will not be offset against costs. Examples include, but are not limited to, when:
- a. Payments are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited.
  - b. Payments are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider and the vendor.
  - c. The volume or value of purchases is so nominal that no relationship to the contribution can be inferred.
  - d. The contributor is not engaged in business with the provider or a facility related to the provider.

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5. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
6. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates should be credited to the costs of the provider in accordance with the instructions above. These should not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
7. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased. They should be used to reduce the specific costs to which they apply. If possible, they should accrue to the period to which they apply. If not, they will reduce expenses in the period in which they are received. The reduction to expense for supplies or services must be used to reduce the total cost of the goods or services for all clients without regard to whether the goods or supplies are designated for all clients or a specific group.
  - a. "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying for paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.
  - b. Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.
  - c. Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or return purchases.
  - d. Rebates represent refunds of a part of the cost of goods or services. Rebates differ from quantity discounts in that it is based on dollar value of purchases, not quantity of purchases.
  - e. "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

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**Section 13 - Nonallowable Costs**

Nonallowable costs include, but are not necessarily limited to:

1. Advertising to the general public exclusive of procurement of personnel and yellow page advertising limited to the information furnished in the white page listing.
2. Amortization of noncompetitive agreements.
3. Bad debt expense.
4. Barber and beautician services.
5. Basic research.
6. Capital improvements by the provider to the buildings of a lessor.
7. Compensation of officers, directors, or stockholders other than reasonable and actual expenses related to client services.
8. Concession and vending machine costs.
9. Contributions or charitable donations.
10. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.
11. (Vacated)

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12. Costs for which payment is available from another primary third party payor or for which the department determines that payment may lawfully be demanded from any source.
13. Costs of functions performed by clients in a residential setting which are typical of functions of any person living in their own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.
14. Costs of participation in civic, charitable, or fraternal organizations.
15. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to vendor.
16. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which becomes an element in the subcontractor's or lessor's charge to the provider, if such costs would have not been allowable under this section had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property.
17. Costs, exceeding the approved budget, unless the written prior approval of the department has been received.
18. Depreciation on assets acquired with federal or state grants.
19. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as a "child with disabilities" by subsection 2 of North Dakota Century Code section 15-59-01, who is no longer enrolled in a school district pursuant to an interdepartmental plan of transition.

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